IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.103 OF 2006

Vijay Vithal Patel @ Dubli ...Applicant

Versus

Maharashtra Housing & Devt.Authority...Respondent

And

Mr.Sutar & Anr. ...Contemnors/ Respondents

.....

Mr.Sakhardande i/b Mrs.A.S.Malvankar for Applicant.

Mr.Y.S.Jahagirdar with Mr.R.M.Patne for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JUNE 27, 2006.

P.C.

1. Heard Counsel for the parties. Mr.Patne waives notice for Respondent.

2. Both Counsel submit that for the nature of order that I propose to pass, issuance of notice to contemnors 1 and 2 can be dispensed with for the

present proceedings.

3. Accordingly, as short question is involved, this Revision is taken up for hearing forthwith, by consent.

4. This Revision Application takes exception to the Judgment and Order passed by the Trial Court dated 23rd May 2006 on Notice of Motion No.2015 of 2006 in S.C.Suit No.1756 of 2005. The Trial Court passed the following order :

> "1756/05 Adv.Mr.J.J.Shah for the plff.
> Adv.Mr.Chabriya for the deft.
>
> Heard advocates.
>
> Though fresh N/M is taken out by the plff is labelled as contempt N/M, the same is required to be treated as normal N/M. Perused rozanama dated 12/4/05. It is undisputed position that, CTS No.10 and 13 belongs to MHADA and at present, MHADA applied for fixing the boundary of CTS No.10 & 13 before city survey.
>
> In view thereof, N/M taken out by the plff shall stand disposed off, in the following manner :
>
> 1. The deft. are permitted to carry out survey of CTS No.10 & 13.

2. The plff is directed to pay the necessary charges for fixing the boundary of CTS No.11 within one week from today.

3. CT Survey Officer, Andheri (West) shall issue appropriate notice to the adjoining owners before carrying out survey, at CTS No.10, 11 & 13.

4. The CT Survey officer is directed to fix boundary, as far as CTS No.10 & 11 are concerned.

5. The CT survey officer shall carry out survey of all the three plots, preferably within two weeks.

6. The necessary reports shall be submitted by the CT survey officer, on the completion of survey, before this court.

7. The deft. is permitted to put a temporary wire fencing demarcating the boundary line, dividing CTS No.10 & 11, keeping 10 ft. gate open for ingress and egress, subject to right of the parties to be decided in the suit.

8. Save and except this order, no other order in this N/M & suit.

9. No order as to costs.

Main motion is already adjd. to 17/6/06."

5. The grievance of the Applicant is that by this cryptic order, the Trial Court not only disposed of the Notice of Motion filed by the Applicant without recording any cogent reasons with regard to the issues raised by the Applicant in the

Notice of Motion, besides, the effect of this order is to undo the order of status-quo passed on the earlier occasion after hearing both the sides on 12th April 2005 on Notice of Motion No.1466 of 2005 in Suit No.1756 of 2005, which order reads thus :

> "1756/05 Mr.Sakhardande, Adv.for plff present.
> Mrs.Prabhu, Adv. for Deft/MHADA present.
>
> The plff claims to be the owner of CTS No.11, 12, 29 and 30. According to him, the defts/MHADA are the owners of CTS No.10 and 13 shown in the map annexure -C and they are trying to make encroachment on CTS no.11.
>
> Hd. Mr.Sakhardande, adv. for plff. Perused the plaint, documents annexed to the plaint, prayers in the NM and aff. in support of NM.
>
> Mrs.Prabhu, adv. for defts/MHADA submitted that the MHADA is not making any construction on CTS No.11 and they are constructing a wall on the CTS No.10 and they found that plffs have encroached on CTS No.10.
>
> In the circumstances, parties to maintain status-quo till the defts file reply to the NM.
>
> NM be registered and made ret. along with writ of summons to 10.6.05."

6. I find substance in the grievance made by the Applicant. The manner in which Notice of Motion taken out by the Applicant has been disposed of by the Trial Court by the impugned order cannot be sustained. It is also obvious that the effect of this order is to modify the order passed on 12th April 2005 by the same Court after hearing both sides. Indeed, it is open to the Court to modify ad-interim order, however, while doing so, the Court has to record sufficient reasons, much less, tangible reasons to support such a view. In any case, the grievance of the Applicant about breach of the order of status-quo as asserted on affidavit cannot be brushed aside so lightly unless the Court was to record a positive finding that the said allegations are devoid of merits or incorrect.

7. In the circumstances, instead of going into the correctness of the said allegations for the first time in this Revision, the appropriate course, to my mind, is to set-aside the impugned order dated 23rd May 2006 and relegate the parties before the Trial Court by restoring the contempt Notice of Motion No.2015 of 2006 which in turn,

will be decided by the Trial Court along with the main Notice of Motion No.1466 of 2005, which is slated to be heard tomorrow or on such other date, as may be convenient to the Trial Judge.

8. It is made clear that all questions in both the Notices of Motion are left open to be decided on its own merits in accordance with law.

9. It will be open to the Applicant to carry out amendment in the prayer clause of the Notice of Motion No.2015 of 2006, if so advised, which request will be considered by the Trial Court on its own merits in accordance with law.

10. It is also made clear that the steps taken by the Respondent on the basis of impugned order dated 23rd May 2006 are made subject to the outcome of the decision on Notice of Motion No.1466 of 2005 and contempt Notice of Motion No.2015 of 2006 which will have to be decided by the Trial Court on its own merits. All these issues are kept open.

11. The Trial Court may pass appropriate directions in the event, the case of the Applicant is to be accepted whereby requiring the Respondent to restore status-quo ante as on 12th April 2005.

12. Revision Application disposed of on the above terms.

A.M.KHANWILKAR, J.